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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.603/2002

APPELLANT

Somra, s/o Sohan Pahadi Korva,
aged about 35 years, Occupation
Labour, r/o Village Kota Gahna
Baherapara, District Sarguja
(C.G.)

Versus

RESPONDENT

The State of Chhattisgarh,
Through the Station House
Officer, Rajpur, Distt. Sarguja
(C.G.)

**DB: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.**

Appearance:

Shri Vijay Deshmukh, Counsel for the appellant.

Shri D.K. Gwalre, Govt. Advocate for the State.

ORAL JUDGMENT
(19.12.2007)

Following judgment of the Court was passed by

SUNIL KUMAR SINHA, J.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 24.5.2002 passed by the 1st Addl. Sessions Judge, Ambikapur, in Sessions Trial No.124/2001 whereby the appellant has been convicted u/ss 302 & 201 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default thereof to further undergo R.I. for 6 months; & R.I. for 3 years and to pay a fine of Rs.500/-, in default thereof, to further undergo R.I. for 3 months, with a further direction to run the sentences concurrently.

(2) The case of the prosecution is that on 28.1.2001 at about 4 p.m., the deceased namely Smt. Sanjhiya Bai and her husband namely Somra (accused/appellant) left their house saying that they are going to sell milk and they have to realize some money from one Jugiya Seth of Rajpur and after doing this they will go to the in-laws place of the appellant. On 31.1.2001 Ropni Bai (P.W.6), mother of the appellant went to the forest for picking



wood. She saw that the dead body of the deceased was lying in a pit in the forest. Since the appellant had also not returned back to the house, she went to the Police Station and lodged *Merg* intimation Ex.P.14. After receiving the *Merg*, the I.O. left for the scene of occurrence. The body was exhumed on 01.2.2001 vide Ex.P.5. Thereafter, after giving notice (Ex.P.1) to the *Panchas*, he prepared inquest on the body of the deceased under Ex.P.2. Site plan was prepared under Ex.P.4. Samples of soil near the dead body were collected under Ex.P.3. Clothes of the appellant were seized under Ex.P.6. Another site plan Ex.P.7 was also prepared. After taking the accused appellant in custody, his memorandum was recorded vide Ex.P.9, in pursuance of which, a piece of stone was seized under Ex.P.10. The body was sent for postmortem examination under Ex.P.17. The postmortem was conducted by Dr.Preetam Sai (P.W.13), who prepared his report under Ex.P.18. He noticed the following injuries on the body of the deceased:

- (i) the right portion of the chest was compressed and there was slightly dark colour on it. After dissection, it was detected that clotted blood was present and 7th, 8th, & 9th ribs were fractured;
- (ii) Nose and upper lip were swollen and the blood was oozing out of them;
- (iii) There was a contusion on the left elbow joint, it was blackish in colour;
- (iv) There was an antemortem abrasion on the right scapular region which was stained with blood;
- (v) There were many abrasions on the right arm elbow joint extending upto shoulder joint;
- (vi) Left wrist and palm were stained with blood;
- (vii) There was antemortem lacerated wound on the left leg admeasuring 3cm x 2 cm with clotted blood present;
- (viii) There were antemortem abrasions on the back;
- (ix) There were many abrasions on the back side of the buttock



- (x) There was a contusion on the right side of the back. After dissection, clotted blood was present there.

According to the Autopsy Surgeon, all the injuries were antemortem in nature. He opined that cause of death was syncope due to severe hemorrhage from right ruptured lung. The death was homicidal in nature.

(3) After completion of usual investigation, the charge sheet was filed in the Court of J.M.F.C., Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where it was received on transfer by the First Addl. Sessions Judge, who after conducting the trial, convicted and sentenced the accused/appellant as aforementioned.

(4) Admittedly, there is no direct evidence in this case and the conviction of the appellant is based upon the circumstantial evidence i.e., the evidence of lastly seeing the appellant with the deceased.

(5) Learned counsel for the appellant argues that the appellant and the deceased were husband and wife and according to the prosecution, they had left their house for selling milk and going to the market on 28.1.2001 and the dead-body of the deceased was seen in the forest by P.W.6 Ropni Bai on 31.1.2001, therefore, there is a long time gap between the two points of time when the deceased was last seen in the company of the accused and when she was found dead by her mother-in-law namely Ropni Bai (P.W.6). Therefore, a possibility of a third person coming in contact with the deceased cannot be fully ruled out in this case and solely on this circumstance, conviction of the appellant cannot be sustained.

(6) On the other hand, learned State Counsel opposes this argument and supports the judgment of conviction and order of sentence passed by the trial Court.

(7) We have heard Mr. Vijay Deshmukh, learned counsel for the appellant and Mr. D.K. Gwalre, learned Govt. Advocate for the state and have also perused the records of the sessions case.



(8) Admittedly, there are no eye-witnesses in this case and the conviction of the appellant is based upon the sole circumstance of last seen together. The case of the prosecution is that the deceased and the appellant both had left their house on 28.1.2001 at about 4 p.m. P.W.5 Lachhu, son of the appellant and P.W.6 Ropni Bai, mother of the appellant were the two witnesses of last seen together. Though the prosecution case regarding last seen together is based upon their evidence, but both these witnesses have turned hostile before the Court. P.W.5 Lachhu has deposed that the appellant is his father and the deceased was his mother. The deceased has died 8-9 months prior to the date of deposition. He has deposed that he cannot say as to how she died. According to him, he has not seen any *Marpit* between the appellant and the deceased and he had never heard any hue and cry. In para 2 of his evidence, he has deposed that he had never seen quarrel between his mother and father. He had only stated that his mother and father had gone to the market and except this he does not know anything. They had gone to the market at about 11 a.m. This witness has been declared hostile and a lengthy cross examination has been done by the Public Prosecutor but nothing material could be brought in his cross examination.

(9) P.W.6 Ropni Bai, mother of the appellant, has also deposed in similar fashion. She has deposed that the appellant is her son and deceased was her daughter-in-law, who has died one year prior to the date of deposition; she had not seen *Marpit* between them, her daughter-in-law has died but she does not know how she has died. She has gone to the police station and told about the death of her daughter-in-law. She has admitted her signature on the *Merg* intimation Ex.P.14. This witness was also declared hostile by the prosecution and she was also put to a lengthy cross examination by the public prosecutor but nothing material could be brought on record from this witness also.

(10) Besides the above evidence, there is evidence of memorandum of this appellant under Ex.P.9, in pursuance of which, a piece of stone was recovered under Ex.P.10. The said piece of stone, alongwith other articles, was sent for chemical examination to Forensic Science Laboratory, Sagar, from where report Ex.P.26 was received, but in the said report blood stains

were not found on the stone. It is on this evidence only; the Sessions Court has convicted the appellant mainly taking the ground of last seen together.

(11) It has been laid down by the Apex Court in the matter of **Bodh Raj alias Bodha and others -Vs- State of Jammu and Kashmir, AIR 2002 SC 3154** that there is no doubt that conviction can be based solely on circumstantial evidence but the conditions precedent before conviction could be based on the circumstantial evidence, must be fully established. They are:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

About the last seen theory, the Apex Court held that the last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

(12) Almost similar view was again taken by the Apex Court in the matter of State of Goa -Vs- Sanjay Thakran & anr., (2007

(4) SBR 321. While passing the said judgment, the Apex Court has also referred to the decision of *Bodh Raj case (supra)* and finally about the circumstance of last seen together, again it was reiterated that it would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out.

(13) If we examine the evidence on record, in light of the above principles, it would appear that even according to the prosecution the deceased and the appellant were last seen together on 28.1.2001 and the dead body of the deceased was found in the forest on 31.1.2001, therefore, admittedly there is long time gap between the two points of time that is when the deceased was last seen in the Company of the accused/appellant and when the deceased was found dead in the forest. In the facts and circumstances of this case, a possibility of any third person coming in between cannot be fully ruled out in this case. Therefore, we are of the considered opinion that the conviction of the accused appellant, on the basis of sole circumstances of last seen together, cannot be sustained.

(14) In the result, the appeal is allowed. The conviction and sentence imposed upon the appellant are set aside. He is acquitted of the charges framed against him. It is stated that the appellant is in jail since 06.2.2001. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

/Rao/